Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Petitions of US LEC Corp. and T-Mobile USA, Inc., *et al*, for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic	)	

REPLY COMMENTS OF AT&T CORP.

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TABLE OF CONTENTS

CITED COMMENTERS

AT&T	AT&T Corp.
AT&T Wireless	AT&T Wireless Services, Inc.
AIRITC	Alliance of Incumbent Rural Independent Telephone Companies
Cingular	Cingular Wireless LLC
CTIA	Cellular Telecommunications & Internet Assoc.
ICORE	ICORE, Inc.
Midwestern ILECs	Fred Williamson & Assocs., Inc.
MIC	Minnesota Independent Coalition
Montana LECs	Montana Local Exchange Carriers
NTCA	National Telecommunications Cooperative Association
OPASTCO	Organization for the Promotion & Advancement of Small Telecomms. Cos.
Qwest	Qwest Communications Int'l Inc.
RCA & RTG	Rural Cellular Assoc. & Rural Telecommunications Group
RTG	Rural Telecommunications Group
SBC	SBC Communications Inc.
Sprint	Sprint Corporation
USCC	United States Cellular Corporation
Verizon Wireless	Verizon Wireless
WorldCom	WorldCom, Inc.

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Regarding LEC Access Charge for CMRS Traffic	)	

REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and the Commission's Public Notice of September 30, 2002 (DA 02-2436), AT&T Corp. ("AT&T") submits the following reply comments on (1) the petition of US LEC Corp. ("US LEC") for a declaratory ruling that competitive local exchange carriers ("CLECs") are entitled to recover access charges at the full benchmark rate from interexchange carriers ("IXCs") on interexchange calls originating or terminating on the networks of commercial mobile radio service ("CMRS") carriers, and (2) the petition of T-Mobile USA, Inc., et al. ("T-Mobile") for declaratory ruling that "wireless termination tariffs" are an unlawful means of establishing reciprocal compensation arrangements.

I. INTRODUCTION AND SUMMARY

As AT&T explained in its opening comments (at 10-17), the question actually raised by US LEC's petition for declaratory ruling is far more controversial than its vague request for a ruling "that a LEC is entitled to access charges when the calls originate and/or terminate on a wireless network" (US LEC Pet. 2) would appear to indicate. Contrary to the understandable misapprehension of the majority of commenters that purport to "support" US LEC's petition, no IXC denies the unremarkable proposition that to the extent that a local exchange carrier ("LEC") actually provides a switching or transport function that is necessary to complete an interexchange

call to or from one of the LEC's own end users, the interexchange carrier ("IXC") involved in the call is generally required to compensate the LEC for that access service at the appropriate rate notwithstanding the fact that the caller at the other end of the call is a CMRS end user.

The dispute between IXCs and CLECs that is in fact presented by US LEC's petition arises from the efforts of a number of CLECs to impose on IXCs the full CLEC benchmark access charge rate for transporting calls from a CMRS carrier to the IXC's POP, typically via an ILEC tandem, even though in that circumstance the CLECs have provided none of the functionalities that justify the imposition of any access charges, let alone a charge set at the full benchmark rate. The few commenters who address *this* issue are in full agreement with AT&T's position: LECs should receive compensation only for the non-duplicative access services that they actually provide – and no LEC should receive compensation in those situations where the LEC provides *no* genuine access functionality. Under these principles, the only circumstance in which a CLEC should be entitled to charge an IXC for access on a call that originated with a CMRS end user is when the CLEC replaces the ILEC in performing the tandem functions or the 8YY database query normally provided by the ILEC, and in that circumstance the CLEC should charge a rate no higher than the rate charged by the ILEC for that same service.

Finally, the comments also confirm that the Commission should grant T-Mobile's petition, but only if the Commission provides the same relief to all carriers, not just CMRS carriers. Indeed, as AT&T has shown, the Commission should eliminate all of the existing regulatory disparities between CMRS carriers and IXCs, and amend its rules to make clear that the reciprocal compensation regime governs all intraMTA calls, not just those for CMRS carriers.

II. THE COMMENTS CONFIRM THAT THE COMMISSION SHOULD DENY US LEC'S PETITION.

Due to the vague manner in which US LEC framed its request for a declaratory ruling, most of the commenters addressing US LEC's petition were understandably confused as to the issue in dispute. US LEC's petition is not about the right of a CLEC or LEC to charge IXCs for originating (or terminating) calls to the LEC's own end users. To the best of AT&T's knowledge, no IXC denies its obligation to compensate a LEC at the appropriate rates for originating an interexchange call from one of the LEC's own wireline end users that is destined to a CMRS carrier's end user, or conversely for terminating to one of its wireline end users a CMRS-originated interexchange call (assuming, of course, that the IXC has ordered the service). For this reason, the majority of commenters who purport to "support" US LEC's petition in fact address a straw man.[1]

Instead, the question raised by US LEC's petition is whether a CLEC that routes calls between a CMRS carrier's switch and an IXC POP should be entitled to charge IXCs the full CLEC benchmark rate for that service.[2] As AT&T explained in its opening comments, the answer to that question is clearly no. Where, as is usually the case, the CLEC routes CMRS-originated toll-free (or other) traffic destined to an IXC by interposing its switch between the CMRS switch and the ILEC tandem switch, the CLEC is not providing any necessary switching functionality, and any service it does provide is simply duplicative of that provided by either the CMRS carrier (who provides local switching and the local "loop" on these calls) or the

[1] *See, e.g.*, AIRITC at 4; ICORE at 3-5; MIC at 2; Montana LECs at 2; NTCA at 10; SBC at 7.

[2] *See* WorldCom at 1 ("US LEC is not seeking Commission approval of its right to offer tandem transit services in competition with the incumbents. Instead, it wants the Commission to sanction a practice whereby a CMRS provider and US LEC conspire to route toll free calls that originate on the CMRS provider's network, through a US LEC Class 5 switch, then to the incumbent LEC's tandem before finally reaching the IXC network for which the calls are destined.").

ILEC (who provides tandem switching and, in the case of toll-free calls, the 8YY database query).[3] "In this configuration the [CLEC] switch provides only a metering function – there is literally no need for these calls to be switched at all, since every single one of them must be routed to the incumbent LEC's tandem."[4] As virtually all commenters agree, CLECs should be compensated only for the necessary access services that they actually provide in routing calls from a CMRS carrier to an IXC,[5] and a CLEC in this configuration is not providing any necessary and non-duplicative access functionality.[6]

The comments that address this issue likewise agree that even where a CLEC is performing a genuine access functionality on CMRS-originated traffic by providing a non-duplicative tandem switching service or 8YY database query, the CLEC should be permitted to charge no more than the appropriate rate for the services the CLEC actually provides, and should not be permitted to charge the full benchmark rate that applies when the CLEC originates traffic from one of its own end users.[7] As Sprint – which nominally supports US LEC's petition – concedes, even where the CLEC *replaces* the ILEC tandem, the only function provided by the

[3] AT&T at 10-11.

[4] WorldCom at 3.

[5] AT&T at 12; AIRITC at 4; ICORE at 3-5; MIC at 2; Montana LECs at 2; NTCA at 10; OPASTCO at 8; RTG at 1-4; SBC at 6; Verizon Wireless at 11.

[6] *See also* Qwest at 11 ("The Commission's rules and policies . . . do not [] provide a mechanism whereby a carrier may perform unnecessary and unasked-for services or functions on behalf of another carrier and obtain payment for its voluntary actions").

[7] The reliance of a number of commenters (Midwestern ILECs (US LEC) at 1; NCTA at 10; SBC at 6) on paragraph 1043 of the Commission's *Local Competition Order* is therefore widely misplaced. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 15499, ¶ 1043 (1996), *aff'd in part & vacated in part, sub nom Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part & rev'd in part, sub nom AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) ("*Local Competition Order*"). Although the Commission there observed that some calls between a "LEC" and a CMRS carrier would be subject to access charges if the calls were carried by an IXC, the Commission made no

CLEC on calls originating from a CMRS carrier and destined for the IXC's POP is tandem switching:

> [T]he bare fact that US LEC is handing off originating wireless traffic to an IXC, or is handing off terminating toll traffic to a wireless carrier, does not entitle US LEC to charge the IXC for the entire originating or terminating access function and retain all amounts so charged if, in fact, it is only performing a tandem function.[8]

It is obviously unreasonable for any CLEC – including US LEC – to charge the full benchmark rate that applies when a CLEC originates a call from one of its own end users[9] when the only service that it is providing is tandem switching (or database dipping for 8YY calls),[10] and not a single commenter provides any justification for application of the full benchmark rate in these circumstances. Indeed, as Sprint notes (at 6), "the suggestion in US LEC's petition (at 9) that it would be entitled to charge the full CLEC benchmark rates established in the [*CLEC Access Charge Order*], when it [only] performs part of the access function is entirely misplaced. Nothing in that . . . *Order* remotely suggests that the ceiling benchmarks adopted therein are presumptively reasonable in instances where the CLEC is performing only a part of the access function." Instead, where the CLEC replaces the ILEC tandem function it may charge the IXC

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determination in that Order as to the appropriate access charges that would apply where a LEC is only providing a tandem functionality.

[8] Sprint at 6; *cf.* Qwest at 10 (suggesting that CLECs are "providing no functionality to the IXC, other than perhaps duplicating the tandem switching of the ILEC from whom the IXC has ordered access service")

[9] As AT&T explained in its initial comments (at nn. 28-29 & accompanying text), Commission precedent makes clear that a CMRS carrier is not an end user and must be treated as a co-carrier when determining the access charges paid to a LEC.

[10] s*ee* AT&T at 13; Sprint at 6; WorldCom at 7.

only the "appropriate" rate for *tandem switching*, which is the rate that the competing ILEC would charge for that same functionality.[11]

For these reasons, there is no substance to Verizon Wireless's claim (at 10-13) that CLECs who charge IXCs for access on calls from a CMRS carrier to the IXC's POP are merely engaging in a routine, and presumptively proper, form of "meet-point billing." First, in a valid meet point billing arrangement, two or more carriers bill an IXC for the genuine and necessary access services that each provided in the origination or termination of an interexchange call. As explained above, however, no switching function is necessary at all to route a call from the CMRS switch to the ILEC tandem. For this reason, CLECs who, as is usually the case, merely interpose their switch between the CMRS carrier's local switch and the ILEC tandem are not providing any genuine access functionality, and are instead merely attempting to "gin up access charges for [a CLEC] to bill to IXCs."[12] Second, in a genuine meet point billing arrangement, each carrier charges the IXC only for those access functions that the carrier in question actually provides. By contrast, as explained above, US LEC and other CLECs are seeking to impose the full benchmark rate even where they – at most – are providing only tandem functionalities (or database queries). The existence of valid meet point billing arrangements in the industry thus provides no support whatsoever for CLECs' efforts to impose widely excessive fees on IXCs for performing unnecessary and duplicative functions.[13]

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[11] *See also* Sprint at 6 ("absent a lawful arrangement between the wireless carrier, US LEC and the IXC permitting such a practice, US LEC is not entitled to charge for access at rates of its own choosing and divide those amounts with the wireless carrier").

[12] *See* WorldCom at 2. *See also id.* at 2-4 (describing arrangement and explaining how it massively increases costs for IXCs).

[13] The Commission should obviously dismiss out of hand the attempt by the RTG to use this proceeding to argue that CMRS carriers are entitled as a matter of federal law to bill IXCs directly for access – a position that the Commission recently rejected. *Petitions of Sprint PCS & AT&T Corp. for Decl. Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 F.C.C.

III. THE COMMENTS CONFIRM THAT THE COMMISSION SHOULD GRANT T-MOBILE'S PETITION AS TO ALL CARRIERS, NOT JUST CMRS CARRIERS, AND THAT IT SHOULD ELIMINATE THE EXISTING REGULATORY DISPARITIES BETWEEN CMRS CARRIERS AND IXCS.

The comments also confirm that the Commission should grant the T-Mobile petition, but only if it provides the same relief to all carriers, not just CMRS carriers. Indeed, CMRS carriers, CLECs, ILECs, and IXCs agree that ILECs are not permitted to bypass the reciprocal compensation regime through the unilateral filing of access tariffs.[14] More importantly, however, the comments also confirm that the Commission should promptly eliminate the disparate treatment of CMRS carriers and IXCs under its reciprocal compensation regime, and make clear that its reciprocal compensation rules govern *all* intraMTA calls for all carriers, including IXCs. The commenters note the indisputable fact that CMRS carriers increasingly compete head-to-head with IXCs, and that "traditional toll traffic" is "migrat[ing]" to CMRS networks.[15] Because of this increasing competition, the Commission's disparate treatment of IXCs and CMRS carriers is increasingly harmful and should be eliminated as quickly as possible.[16]

Rcd. 13192 (2002) ("*CMRS-IXC Access Charge Declaratory Ruling*"). Thus, Verizon Wireless's assertion (at 14) that the *CMRS-IXC Access Charge Declaratory Ruling* "recently confirmed that CMRS providers are themselves entitled to charge for access" is, as the Commission is aware, blatantly false. To the extent that the RTG's comments relate to this proceeding at all, they undermine US LEC's position by acknowledging (at 2) that LECs, like US LEC, do not provide "the lion's share of access" on interexchange calls placed by CMRS end users. However, given that IXCs have not expressly agreed to pay access charges to CMRS carriers, and that an IXC does not enter into any sort of "implied contract" merely by delivering traffic to a CMRS end user (or accepting 8YY traffic from a CMRS end user), CMRS carriers themselves have no right to collect access charges.

[14] *See, e.g.*, AT&T Wireless at 3, 8; Cingular at 3-4; CTIA at 4-5; Qwest at 7-8; RCA & RTG at 2-3; Sprint at 7-9; USCC at 2; Verizon Wireless at 5.

[15] *See, e.g.*, Michigan ILECs at 2.

[16] *See* AT&T at 18-20; *see also* TCA at 3 ("competitively neutral compensation system is absolutely necessary"); AT&T Wireless at 6 (Congress intended Sections 251 and 252 to be a

IV. CONCLUSION

For the foregoing reasons, as well as those addressed in AT&T's initial comments in these proceedings, the Commission should deny US LEC's petition for declaratory ruling and instead rule that a CLEC that merely inserts itself between a CMRS carrier and an ILEC tandem switch has provided no additional access functionality and is not entitled to collect any access charges from IXCs. Where an CLEC actually *replaces* the ILEC and provides particular access functions previously provided by the ILEC on connections between the CMRS carrier and the IXC (*i.e.*, tandem switching and, if applicable, the 8YY database query), on the other hand, the Commission should permit that CLEC to charge only for the specific access functions actually performed by the CLEC and not duplicated by the ILEC, and the Commission should limit the CLEC's charges for those functions to the amounts that would have been charged by the competing ILEC for the same access service. Finally, the Commission should also grant T-Mobile's petition for declaratory ruling, but *only* if it applies T-Mobile's proposal to all carriers, not just CMRS carriers.

"comprehensive framework for interconnection between all types of telecommunications carriers").

Respectfully submitted,

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November 1, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments of AT&T Corp. was served, by the first class mail, unless otherwise noted, the 1st day of November, 2002, on the following:

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